



Signed and Filed: May 28, 2019

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Chapter 11
PG&E CORPORATION,) Bankruptcy Case
and) No. 19-30088-DM (Lead Case)
PACIFIC GAS AND ELECTRIC) Bankruptcy Case
COMPANY,) No. 19-30089-DM
Debtors.) (Jointly Administered)
☐ Affects PG&E Corporation)
☒ Affects Pacific Gas and Electric Co.)
☐ Affects both Debtors)
* All papers shall be filed in)
Lead Case, No. 19-30088-DM.)

MEMORANDUM DECISION ON MOTION
TO APPOINT A RATEPAYERS' COMMITTEE

On May 9, 2019, this court held a hearing on the motion filed by The Utility Reform Network ("TURN") for appointment of an official committee of ratepayer claimants (the "TURN Motion"). Having considered arguments made at the hearing and in TURN's moving papers and reply, in various joinders,¹ and in oppositions

¹ The following entities filed joinders, non-oppositions, or statements in support of the TURN Motion: Northern California Power Agency; City and County of San Francisco; California Large Energy Consumers Organization; California Farm Bureau Federation; the Public Advocates Office at the California Public Utilities Commission; and the SLF Fire Victim Claimants. Another joinder was filed, but subsequently withdrawn.

1 filed by PG&E Corporation (the "Corporation") and Pacific Gas and
2 Electric Company (the "Utility") (collectively, "Debtors"), the
3 Official Committee of Unsecured Creditors ("OCUC"), and Andrew R.
4 Vara, Acting United States Trustee for Region 3 (the "UST"), the
5 court concludes that the ratepayers do not have a "claim" for which
6 separate representation by a committee is necessary and will enter
7 therefore an order denying the TURN Motion.

8
9 **I. REQUESTED RELIEF**

10 Contending that neither the OCUC nor the Official Committee of
11 Tort Claimants ("OCTC") "can speak on behalf of the ratepayers who
12 will fund any plan" (TURN Motion, Dkt. 1324 at 5:12-14), TURN
13 asserts that a separate committee for "focusing the views and
14 opinions of all ratepayers" is essential. Instead of proposing
15 that individual and small business ratepayers act as committee
16 members, TURN suggests that representatives of various non-creditor
17 special interest groups serve on its proposed ratepayer committee
18 (*Id.* at 5:27 - 7:13). These entities include TURN itself, the
19 Public Advocates Office of the California Public Utilities
20 Commission ("CPUC"), Energy Policy of California Farm Bureau
21 Federation, California Large Energy Consumer Advocates, AARP
22 California, and the Greenlining Institute (*Id.* at 6:1-5).

23 **II. GOVERNING LAW**

24 The Bankruptcy Code provides that the UST "shall appoint a
25 committee of creditors holding unsecured claims and may appoint
26 additional committees of creditors or of equity security holders as
27 the United States trustee deems appropriate." 11 U.S.C. §
28

1 1102(a)(1).² Section 1102(b) governs committee appointments and
2 composition. To be eligible for appointment, prospective members
3 must qualify as creditors or equity interest holders. 11 U.S.C. §
4 1102(b)(1) and (2). TURN contends that ratepayers are "creditors"
5 entitled to representation by their own committee apart from the
6 OCUC.³

7 Section 101(10) defines "creditor" as an

8 (A) entity that has a claim against the debtor that
9 arose at the time of or before the order for relief
concerning the debtor;

10 (B) entity that has a claim against the estate of a
11 kind specified in section 348(d), 502(f), 502(g),
502(h) or 502(i) of this title; or

12 (C) entity that has a community claim.

13 11 U.S.C. § 101(10). A "claim," in turn, includes a "right to
14 payment." 11 U.S.C. §§ 101(5).

15 **III. DISCUSSION**

16 **A. Ratepayers Are Not Creditors**

17 As required by section 1102, the UST appointed the OCUC to
18 represent the interests of unsecured creditors. Under section
19 1102(a)(2), the court may (but is not required to) appoint
20 additional committees of *creditors*. TURN contends that ratepayers
21 are creditors because they are entitled to receive a semiannual
22

23 ² Unless otherwise indicated, all chapter, section and rule
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

25 ³ Despite the contention that ratepayers are entitled to
26 representation by their own committee, TURN proposes that special
27 interest groups that are not creditors or typical ratepayers
28 themselves be members of the committee. TURN has not demonstrated
that these entities or persons owe financial fiduciary duties to,
or maintain agency relationships with, the ratepayers they would
purport to represent.

1 credit on their bills stemming from auctions of greenhouse gas
2 ("GHG") allowances. It further alleges that at the time its motion
3 was filed, the Utility owed \$324,538,000 to residential, small
4 business and emission-intensive trade-exposed retail customers,
5 plus another \$128,975,630 to gas ratepayers. TURN Reply, dkt. 1820
6 at ECF pg. 8, l. 12-15.⁴ According to TURN, this right to
7 semiannual refunds constitutes a "right to payment" under section
8 101(5) that entitles ratepayers to assert creditor status for the
9 purposes of section 1102. As discussed below and at the hearing,
10 the court disagrees.

11 First, the semiannual credit is applied automatically and the
12 court has already entered an order permitting Debtors to continue
13 applying those credits going forward. The court therefore rejects
14 the contention that this automatic, on-going and court-approved
15 right to an on-bill credit renders a ratepayer a "creditor"
16 entitled to separate representation by a committee.⁵ Even if these

17 ⁴ TURN also asserts in its reply that the CPUC is currently
18 conducting two investigations into the Utility's prepetition
19 conduct that "could result in remedies owed to ratepayers." TURN
20 Reply, dkt. 1820 at ECF pg. 9, l. 2-3. According to TURN, such
21 remedies "could take any form, including credits to ratepayers
22 against revenues[.]" *Id.* at lines 9-14. The CPUC is investigating
the Utility's conduct, and will determine the any liability and the
appropriate remedy. It will impose and enforce any such liability
in its regulatory capacity. The bankruptcy court has no role to
play in this matter, and committee representation of ratepayers is
thus unnecessary.

23 ⁵ The objections filed by the UST, the OCUC and Debtors also
24 persuasively reject the position that ratepayers are persons who
25 hold claims against the Debtor and are thus eligible to serve on an
official committee under section 1102(b)(1):

26 TURN argues that because PG&E customers are entitled to
27 receive a small credit on their bills twice a year,
28 "[e]very ratepayer within PG&E's service area is a
creditor in these cases." ECF No. 1324 at 8-9. While
TURN is correct that 11 U.S.C. § 101(5)(A) defines
"claim" as a "right to payment," ratepayers do not have a

1 on-bill credits did represent unsecured debts, the OCUC provides
2 adequate representation for customers who may assert a prepetition
3 claim for missed credits. A separate committee is not necessary to
4 protect the customers' entitlement to the credits.

5 Second, as noted by Debtors in their objection, the GHG
6 credits have been and continue to be credited against the rates,
7 and will continue to be credited in accordance with the CPUC's
8 directive and state law. In fact, this court has granted Debtors'
9 motion to continue certain customer programs, including the
10 postpetition provision of the GHG credits. *See Order (i)*
11 *Authorizing Debtors to (a) Maintain and Administer Customer*
12 *Programs, Including Public Purpose Programs, and (b) Honor any*
13 *Prepetition Obligations Relating Thereto, and (ii) Authorizing*
14 *Financial Institutions to Honor and Process Related Checks and*
15 *Transfers* entered on March 12, 2019 (Dkt. 843). Any credits
16 arising prepetition will be paid soon, if not already.
17 Consequently, any "claims" that existed as of the petition date
18 (January 29, 2019) will be gone very soon.

19 Moreover, the ratepayers do not have "claims" for such funds
20 apart from the CPUC's directive, so even if PG&E did default, the
21 CPUC can compel payment under its regulatory powers. The

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23 right to payment. In fact, the [PUC] specifically
24 rejected the idea of paying customers directly via an
25 off-bill rebate check in favor of an on-bill credit. ECF
26 No. 1326-1 at 121. All current customers receive the
27 small credit in April and October, *id.* at 122, a minor,
28 automatic statement adjustment that does not rise to the
level of transforming all gas and electric customers into
creditors of PG&E.

UST *Objn.* at dkt. 1651 at 5:16-25; *see also OCUC Objn.* at dkt.
1653, ¶¶ 16-18; *Debtors' Objn.* at 10:19 - 12:1-14.

1 entitlement to credits are therefore not "claims" that should be
2 classified and treated/modified under a chapter 11 plan. More
3 importantly, the CPUC has already determined that these credits are
4 NOT "refunds." CPUC Decision No. 18-03-017 ("GHG allowance proceeds
5 are not analogous to the funds found to qualify as "rate
6 refunds[.]").

7 Finally, the formation of a committee of interested parties
8 based on a "right of payment" that the court has already recognized
9 and for which the court has authorized ongoing payment is not
10 supported by the language and intent of Bankruptcy Code section
11 1102.

12 *B. The Relief Sought in The TURN Motion is Unnecessary*

13 The TURN Motion seeks appointment of a ratepayers committee to
14 serve the interests of the ratepayers as *ratepayers* and *future*
15 *customers*, and not their interests as nominal creditors. In
16 enumerated paragraph 2 of the motion (TURN Motion, dkt. 1324 at 5),
17 TURN argues that the existing committees cannot "speak on behalf of
18 the ratepayers who will fund any plan." "The members of each
19 respective official committee are fiduciaries for the general
20 unsecured and tort claimants in this case. None can be expected to
21 *separately assert and advocate for the interests of ratepayers as*
22 *regards future rate increases that will necessarily be required to*
23 *confirm the plan.*" (*Id.* at 10:1-4).

24 The Bankruptcy Code, however, does not provide for the
25 creation of a separate committee to protect the interests of future
26 consumers or customers of a debtor. As the court noted in its
27 Memorandum Decision Regarding Motion for Order Vacating Appointment
28 of Committee of Ratepayers in the prior PG&E case (Case No. 01-

1 30923 at dkt. 599) (the "2001 Decision"), "there is no authority in
2 the Bankruptcy Code for the appointment of [a] Official Committee
3 of Ratepayers." *Id.* at 1-2. Further, "ratepayers have other means
4 and other fora to protect their interests. *Id.* at 2. The court's
5 holding in 2001 that the appointment of a ratepayers committee did
6 not assure "adequate representation of creditors" is equally
7 applicable in 2019.

8 In addition, the ratepayers' interests arising from their
9 ratepayer status are protected by section 1129(a)(6), which
10 provides that a plan is confirmable only if "[a]ny regulatory
11 commission with jurisdiction, after confirmation of the plan, over
12 the rates of the debtor has approved any rate change provided for
13 in the plan, or such rate change is expressly conditioned on such
14 approval." *See, e.g., In re Cajun Elec. Power Co-op., Inc.*, 230
15 B.R. 715, 741 (Bankr. M.D. La. 1999) (proposed plan providing that
16 the debtor would "seek all necessary approval" for any rate change
17 satisfied section 1129(a)(6)).

18 Any plan proposed by Debtors or another party must comply with
19 section 1129(a)(6). Therefore, if any future plan includes a rate
20 change, the Utility would first have to obtain full approval from
21 the CPUC, and any ratepayer or entity would have the opportunity to
22 be heard by the regulatory agency during any such consideration.
23 *See In re Pacific Gas and Electric Co.*, 304 B.R. 395, 410 (Bankr.
24 N.D. Cal. 2004) (finding that "[s]ection 1129(a)(6) specifically
25 allows confirmation of a plan containing a rate change as long as
26 the rate change is approved by the commission having jurisdiction
27 over those rates"). Creation of a committee not contemplated under
28

1 the Bankruptcy Code to represent ratepayer interests with respect
2 to future rates is thus unnecessary.

3 **IV. CONCLUSION**

4 TURN has not demonstrated that the appointment of a third
5 official committee is required to adequately represent ratepayer
6 interests given that the CPUC can do so. It has not shown why the
7 OCUC cannot represent whatever interests ratepayers hold as
8 unsecured creditors, assuming they are indeed unsecured creditors.
9 It has not shown how their ability to voice concerns to the CPUC
10 regarding future rate adjustments have been impaired. As section
11 1129 requires any future rate increases to be approved by the CPUC,
12 TURN and ratepayers can fight any rate increases in that forum. A
13 separate ratepayer committee is therefore not justified under
14 section 1102. Consequently, the court will enter a separate order
15 denying the Turn Motion.

16 ***** END OF MEMORANDUM DECISION *****